

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 6079 of 2001

Between:

L.R.Sunder, s/o.L.R.Ramachandran, r/o.

Q.No.821/14, Type-II, Mettuguda, Secunderabad-17.....PETITIONERS

AND

1)The General Manager, South Central Railway,

Rail Nilayam, Secunderabad.

2)The Financial Advisor & Chief Accounts Officer,

South Central Railway, Rail Nilayam, Secunderabad.

3)The Deputy Chief Accounts Officer (G1), O/o. FA & CAO,

South Central Railway, Rail Nilayam, Secunderabad.

4)The Senior Divisional Accounts Officer, Secunderabad Division,

South Central Railway, Sanchalan Bhavan, Secunderabad.

5)The Chief Cashier, South Central Railway, Secunderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction, more in the nature of writ of Mandamus declaring the Memo No.A/AD/29/1/Cashiers/LRs/96, dated 18.7.1996 issued by the fourth

Respondent as confirmed in O.A.No.1410 of 1999, dated 22.3.2000, and also in R.A.No.37 of 2000 in O.A.1410 of 1999 dated 9.2.2001 of the Central Administrative Tribunal, Hyderabad bench, Hyderabad as illegal, arbitrary, unjust, contrary to law and unconstitutional and consequently declaring the action of the respondents in suspending the petitioner from service as void abinitio, null and void and nonest in the eye of law, with all consequential benefits such as treating the period of suspension as on duty for all purposes, arrears of salary, seniority, etc. by refunding the amount of Rs.1,77,948.35 ps. paid by the petitioner under threat and coercion with interest at 18% per annum.

Counsel for the Petitioner: DR.K.LAKSHMINARASIMHA

Counsel for the Respondent Nos.1 to 5: MR.R.S.MURTHY

The Court made the following :

ORDER : (Per G.Bikshapathy,J)

1. The Writ Petition is filed challenging the order passed by the Central Administrative Tribunal, Hyderabad bench (for brevity 'the Tribunal') in O.A.No.1410 of 1999, dated 22.3.2000 and also in RA.No.37 of 2000, dated 9.2.2001.

2 .The case has a chequered career. Since 1996, the matter continues to be pending either before the authorities or before the Tribunal or before this court. But now we have to lay a final curtain to this case so as to avoid the parties approaching this court further at intermediary stages.

3. The petitioner was working as Senior Cashier in the office of the Chief Accounts Officer, South Central Railway. On 7.7.1996, while he was carrying cash and about to board the train, it is alleged that he became unconscious and he was admitted in the hospital where he underwent treatment for more than 45 days. However, the Railways lodged an F.I.R. on 12.7.1996 alleging that he misappropriated a sum of Rs.1,77,940-30 ps. Thereafter, the petitioner was placed under suspension by an order dated 18.7.1996 and a charge sheet was issued to him on the same day alleging with the following Charges.

“Article-I

Article-I: Sri L.R.sunder, Sr.cashier, DC (Pay) /SC Division committed serious misconduct in that, while working as Sr.Cashier he was entrusted with connected pay sheets and sufficient money for disbursement of these payments to the staff of IPF/DKJ, LF/DKJ & unpaid wages at BDCR. He took ill on 7.7.1996 and was admitted into the Railway Hospital. The Panchanama conducted and the assessment of his liability as on the date revealed a shortage of Rs.1,77,940.35 ps. From the cash entrusted to him solely for disbursements purpose.

He has misappropriated the said sum of Rs.1,77,940.35 ps. with an intention to gain pecuniary advantage to himself and cause loss to Railway Administration. He thus exhibited lack of integrity and failed to maintain absolute devotion to duty and thus acted in a manner unbecoming of a Railway Servant contravening Rule 3(1)(i), (ii) and (iii) of the Railway Servant Conduct Rules of 1968 as detailed in the statement of imputations.

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Article-II: That Sri L.R.Sukndar, Sr.Cashier, OC (Pay/SC Division) committed serious misconduct in that, he as a Senior Cashier was entrusted with sufficient money and connected pay sheets for making payment to the staff of IPF/DKJ, LF/DKJ & unpaid wages at BDCR. He took ill on 7.7.96 and was admitted into Railway Hospital. The panchanama conducted and the assessment of his liability as on that date revealed a shortage of Rs.1,77,940.35 ps. from the cash entrusted to him solely for disbursements purpose, as a result of which payment could not be arranged as scheduled. This created unrest and dislocation in railway working. He thus exhibited lack of integrity, and failed to maintain absolute devotion to duty and thus acted in a manner unbecoming of a Railway Servant contravening Rule 3(1)(i), (ii) and (iii) of the Railway Services Conduct Rules of 1968 as detailed in the statement of imputations.”

4. It is also brought to the notice of this court that a criminal complaint was filed against the petitioner which was taken cognizance of, by the XIII Metropolitan Magistrate for Railways, Secunderabad, in C.C.No.75 of 1997, and the petitioner was acquitted by judgment dated 18.11.1999. Thereafter, he filed O.A.1410 of 1999 on the file of the Tribunal, seeking quashing of the charge sheet on the ground

that he was acquitted by the criminal Court on merits and therefore proceeding departmentally on the very same charge, which was scrutinized by the competent criminal Court, and the criminal Court having found him not guilty, the authorities were estopped from proceeding further. The Tribunal, however, passed orders on 22.3.2000 dismissing the said O.A. Thereafter, the petitioner filed Review Application No.37 of 2000 in O.A.1410 of 1999 and the same was also dismissed by order dated 9.2.2001. Against both the orders, the present Writ Petition has been filed.

5. It is also on record that on earlier occasion the petitioner filed O.A.No.1044 of 2000 assailing the appointment of inquiry officer and the Tribunal allowed the said O.A. on 20.2.2002 directing the respondents to appoint a different inquiry officer other than Sri P.P.Ramanuja Baba (respondent No.2 therein) and the new inquiry officer shall complete the enquiry expeditiously and the petitioner shall cooperate in the said enquiry. The respondent-railways appointed a new inquiry officer on 23.4.2002 pursuant to the order of the Tribunal in O.A.1044 of 2000. The Petitioner again filed O.A.855 of 2002 challenging the appointment of inquiry officer as the appointment was not in accordance with the orders passed in O.A.1044 of 2000, and obtained stay therein. Thereafter, the respondent-railways changed the inquiry officer on 20.8.2002 and thereby O.A.855 of 2002 became infructuous. Again when the petitioner approached the Tribunal in O.A.No.1248 of 2002 challenging the appointment of inquiry officer and for a direction to appoint an inquiry officer of equal status or higher than that of the de-facto complainant and who was prime prosecution witness, the said O.A. was disposed of by the Tribunal by an order dated 5.5.2003. Against

the said order, the petitioner carried the matter in Writ Petition No.12613 of 2003 before this court, and this Court while dismissing the said Writ Petition directed the respondents to proceed with the enquiry and complete the same in accordance with Rules within a period of six(06) months as directed by the Tribunal. It was further directed that the petitioner shall not approach the Tribunal at the interlocutory stage till the entire enquiry proceedings are completed, and it is always open for him to challenge any deficiencies in the enquiry after the final orders are passed. Thereafter, the respondent-railways filed M.A.No.85 of 2004 in O.A.No.1248 of 2002 seeking further time to complete the enquiry and the Tribunal dismissed the same on 10.3.2004 . Therefore, the sequence of events would clearly indicate that the matter is unduly being prolonged without culmination in a final order in the disciplinary proceedings.

6 . The learned counsel for the petitioner takes this court through various documents and the voluminous records and submits that the very issuance of charge sheet and consequent disciplinary proceedings are wholly incompetent in the wake of the clean acquittal granted by the competent criminal Court and therefore the charge sheet is liable to be quashed.

7 . We are afraid, this contention, which is the sole contention in the Writ Petition, can not be accepted for the simple reason that initially when the petitioner challenged the appointment of inquiry officer, the Tribunal disposed of the said matter directing the authorities to complete the inquiry within a period of six months and against the said order, the matter was carried in Writ Petition No.12613 of 2003 and in that Writ Petition, this court endorsed the view of the Tribunal and directed the authorities to complete the enquiry in accordance with Rules within a period of six months and further observed that the

petitioner shall not approach the Tribunal at the interlocutory stage and await final outcome in the disciplinary proceedings. In the wake of this order, the petitioner is precluded from contending that the charge sheet is liable to be quashed.

8. Having heard the learned counsel for the petitioner and the learned Standing Counsel for Railways, we find that an amicable solution has to be carved out in the wake of inordinate delay that has been taken place in the proceedings. We are not inclined to attribute the cause for delay either on the respondents or on the petitioner. But, the fact remains that the disciplinary proceedings are still pending, which commenced in the year 1996. Under these circumstances, keeping in view the orders passed by this Court on earlier occasion in the Writ Petition referred to above, the present Writ Petition is disposed of with the following directions.

(1) The respondent-authorities shall proceed with the disciplinary enquiry and pass final orders within a period of four months from the date of receipt of copy of this order.

(2) The petitioner shall co-operate with the enquiry and he is permitted to take the defences which are available to him under law, but he shall not approach the court at intermediary stage as reiterated in the earlier writ petition also.

(3) If the final order is not passed as directed above, the respondent-department shall be precluded from proceeding with further enquiry and all the proceedings initiated in pursuance of the charge sheet shall stand withdrawn.

4. There shall be no order as to costs.

(G.BIKSHAPATHY,J)

13.07.2004

(B.SESHASAYANA REDDY,J)

Copy to:

1)The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.

2)The Financial Advisor & Chief Accounts Officer,
South Central Railway, Rail Nilayam, Secunderabad.

3)The Deputy Chief Accounts Officer (G1), O/o. FA & CAO,
South Central Railway, Rail Nilayam, Secunderabad.

4)The Senior Divisional Accounts Officer, Secunderabad Division,
South Central Railway, Sanchalan Bhavan, Secunderabad.

5)The Chief Cashier, South Central Railway, Secunderabad

6)The Registrar, Central Administrative Tribunal, Bench at Hyderabad.

7)Two CD copies.

DRK

